



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

For Meeting Date: November 10, 2010

**Agenda Item No. 3: Issuance of an Order to Comply to the Big Cut Mine (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operator), Joseph and Yvette Hardesty and Rick Churches (Agent), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).**

**INTRODUCTION:** The State Mining and Geology Board (SMGB) acts as the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710 et seq.) for all surface mining operations in the County of El Dorado. On April 1, 2010, SMGB staff inspected the Big Cut Mine site and observed evidence of unpermitted surface mining operations. Such operations included recent dewatering of underground tunnels and discharge of such flows into surface impoundments, and use and storage of mining equipment, among other activities which entailed surface disturbance exceeding one acre. In addition, physical evidence of slope instability and/or subsidence was observed to the north of the Big Cut Mine site, which may prove hazardous should underground mining activities persist. A Notice of Violation was issued by the Executive Officer on September 3, 2010, and was subsequently received by the Operator on September 7, 2010. At the time this report was prepared, the site remained out of compliance with SMARA. The SMGB is presently considering issuance of an Order to Comply.

**STATUTORY AND REGULATORY AUTHORITY:** Surface mining operations pursuant to SMARA, PRC Article 2, Section 2735, are defined as

*"...all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging or quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:*

- (a) Inplace distillation or retorting or leaching*
- (b) The production and disposal of mining waste*
- (c) Prospecting and exploratory activities"*



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PRC Article 5, Section 2770(a) states:

*“Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.”*

Pertinent exemptions: SMARA allows for certain activities to be exempt including:

PRC Article 1, Section 2714(d) states: *“Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one acre or less.”*

California Code of Regulations (CCR), Article 1, Section 3505(a)(1) states: *“...any surface mining operation that does not involve either the removal of a total of more than 1,000 cubic yards of minerals, ores, and overburden, or involves more than one acre in any one location, shall be exempt from the provisions of this Act.”*

### **BACKGROUND:**

Description of Surface Mining Operation: The Big Cut Mine site encompasses 149.75 acres, and is located off Big Cut Road, approximately 1.5 miles south of the town of Placerville, and about 2 miles northwest of Diamond Springs, in El Dorado County, California. The site and vicinity are underlain by meta-sedimentary basement rocks of Paleozoic age (230 to 600 million years before present; mybp), which are overlain by three sedimentary rock formations of Tertiary age (1 to 63 mybp). From oldest to youngest, these Tertiary deposits are auriferous gravels, Valley Springs formation of Oligocene (25 to 36 mybp) to Miocene age (13 to 25 mybp). The two primary deposits of the Valley Springs formation are the rhyolite volcanic rock member, and fluvial gravel deposits. The auriferous gravels were extensively mined during the latter half of the 19<sup>th</sup> Century. The younger gravel deposits would later be mined to produce road base and surfacing materials (Revised Reclamation Plan for Big Cut Mine dated July 11, 2008). In summary, historically, predecessors mined both gold and aggregate from the site and vicinity. The Big Cut Mine site is situated on a south-facing slope, and characterized by two distinct east-west oriented benches.



Chronology of Pertinent Events and Actions: A chronology of pertinent events and actions pertaining to recent activities is as follows:

April 1, 2010	Big Cut Mine site inspected by SMGB staff.
April 15, 2010	SMGB determined that a preponderance of evidence did not exist that demonstrated Big Cut Mine has vested rights.
June 10, 2010	SMBG adopted Resolution No. 2010-05 denying the claim of vested right of Big Cut Mine's proposed surface mining operation.
September 3, 2010	SMGB issued Notice of Violation to Big Cut Mine owners/operators for operating a surface mine without possession of an approved Reclamation Plan, Financial Assurance, and County Permit to Mine.

Compliance Status: As noted above, on September 3, 2010, the Executive Officer elected to issue a Notice of Violation to the operator of the Big Cut Mine to cease immediately any and all mining activities, and to provide within 30 days of receipt of the Notice of Violation the following items to the SMGB:

1. A draft Reclamation Plan that substantially complies with the requirements of SMARA and Title 14, California Code of Regulations, Sections 3500 et seq., and 3700 et seq.
2. A Financial Assurance Cost Estimate that substantially complies with SMARA and Title 14, California Code of Regulations, Section 3804. (A copy of the SMGB's *Financial Assurance Guidelines* is available on our website to assist you in preparing the cost estimate.)
3. A copy of a Permit to Mine issued by El Dorado County, or a copy of an application for such a permit, if one is deemed necessary by the County.

Alternatively, the Notice of Violation provided that, should the operator decide that no further mining related activities will occur, and there is no intent to conduct such activities on this property in the future, then they must provide the SMGB office with confirmation that all reclamation-related activities to address land already disturbed had been completed within 30 days from receipt of the Notice of Violation. Provision of proof that all mining-related

equipment and debris had been removed from the site, or documentation that any permit(s) required from the County of El Dorado to store such equipment had been procured, was also requested.

Such Notice of Violation was received by the operator via certified letter on September 7, 2010, and also hand delivered to the operator on September 9, 2010. To date, the requirements of the Notice of Violation have not been addressed.

**CONSIDERATION BEFORE THE SMGB:** The SMGB must determine if the operator is in violation of SMARA and the SMGB's regulations for failure to obtain an approved reclamation plan, financial assurance and permit to mine, prior to the conduct of surface mining operations. If it is determine that the operator is in violation of SMARA and the SMGB's regulations, then the SMGB may consider issuance of an Order to Comply.

**EXECUTIVE OFFICER'S RECOMMENDATION:** As of the date of the preparation of this Executive Officer's Report, the SMGB serving as the SMARA lead agency for the Big Cut Mine site has not approved a reclamation plan, and no permit to mine has been obtained from the County. In addition, at the time this report was prepared the disturbance caused by unpermitted surface mining activities has not been remedied or reclaimed. The Executive Officer recommends that the SMGB issue an Order to Comply requiring the operator to commence corrective actions to bring the Big Cut Mine site into compliance with SMARA within 30 days from issuance of such Order to Comply. Failure to comply with the requirements of the Order may subject the operator to Administrative Penalties in an amount up to \$5,000 per day.

**SUGGESTED MOTION LANGUAGE:**

Motion No. 1 - To consider issuance of an Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board issue to Joseph and Yvette Hardesty and Rick Churches, operators of the Big Cut Mine (CA Mine ID #91-09-00XX) an Order to Comply to commence corrective actions at the site not later than December 10, 2010.*

Motion No. 2 - To schedule a public hearing for upholding the Order to Comply:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board, should corrective actions not be commenced to reclaim the site by December 10, 2010, direct the Executive Officer to schedule a public hearing for the Order to Comply. This Order shall be heard at the Board's regular business meeting to be held on December 16, 2010.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer



**EXHIBIT A: SMGB September 3, 2010, Notice of Violation**

**EXHIBIT B: El Dorado County's October 7, 2010, Notice of Violation**

